

December 19, 2017

Via Certified Mail, Return Receipt Requested

Ronald T. Gendron, President and Registered Agent
Greenville Ready Mix Concrete Products, Inc.
79 Cedar Swamp Road
Smithfield, RI 02971

RE: Notice of Violations and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

The Conservation Law Foundation (CLF)¹ hereby gives notice to the addressed persons of its intent to file suit pursuant to Section 505 of the Clean Water Act (the Act), 33 U.S.C. § 1365(a), for violations of the Act specified below. This letter (the Notice) constitutes notice pursuant to 40 C.F.R., part 135, of CLF's intention to file suit in United States District Court for the District of Rhode Island seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this Notice.

The subject of this action is two-fold. First, Greenville Ready Mix Concrete Products Inc. (hereafter Greenville) is discharging stormwater directly associated with a construction sand and gravel and concrete facility located at 79 Cedar Swamp Road, Smithfield, RI (the Facility), to the waters of the United States without a permit, in violation of 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B). Second, Greenville has failed to obtain coverage under any Clean Water Act permit including the Multi-Sector General Permit (MSGP) issued under the Rhode Island Pollutant Discharge Elimination System² (RIPDES) by the state of Rhode Island for industrial sources of polluted stormwater runoff, and failed to comply with the specific requirements of any such permit, in violation of 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).

¹ CLF is a not-for-profit 501(C)(3) organization dedicated to the conservation and protection of New England's environment. Its mission includes the conservation and protection of the many uses of the waters in and around the Woonasquatucket watershed for, among other things, fishing, recreation, scenic/aesthetic and scientific purposes. CLF's membership includes people who live in or near the Woonasquatucket watershed, and use and enjoy the watershed for recreational, aesthetic, and/or scientific purposes. The interests of CLF's members are adversely affected by the Facility's discharges of stormwater pollution to the receiving waters without a permit and in violation of the Clean Water Act.

² The Rhode Island MSGP is available at
<http://www.dem.ri.gov/programs/benviron/water/permits/ripdes/pdfs/msgp.pdf>.

BACKGROUND

Mountindale Reservoir runs along the east side of the Facility. Mountindale Reservoir is a tributary of the Stillwater River, a tributary of the Woonasquatucket Reservoir.³ The Woonasquatucket River is nineteen miles long traveling from its headwaters in North Smithfield to its confluence with the Moshassuck River, where it forms the Providence River.⁴ The Providence River flows into Narragansett Bay. Mountindale Reservoir (Waterbody ID RI0002007R-10A) has not been assessed for water quality or impairments, and as such does not have a TMDL.⁵ Downstream from Mountindale Reservoir, sections of the Woonasquatucket River are impaired for fecal coliform and dissolved metals.⁶ A main pollution source for the Woonasquatucket River is stormwater runoff.⁷

Stormwater is water from precipitation events that flows across the ground and pavement after it rains or after snow and ice melt.⁸ Industrial activities, such as material handling and storage, equipment maintenance and cleaning, industrial processing, and other operations that occur at industrial facilities, may be exposed to stormwater.⁹ Stormwater from industrial facilities, contaminated with pollutants, is then conveyed into nearby waterbodies.¹⁰

Greenville is required to apply for coverage under a Clean Water Act discharge permit such as the MSGP in order to discharge lawfully. Since at least 2012, Greenville has been required to apply for coverage under the MSGP by filing a Notice of Intent ("NOI"). On August 15, 2013, after expiration of the prior MSGP, the Rhode Island Department of Environmental Management issued a new MSGP requiring all covered facilities to file an NOI for coverage under the 2013 permit.¹¹

³ See "Woonasquatucket River Fecal Coliform Bacteria and Dissolved Metals Total Maximum Daily Loads," Rhode Island Department of Environmental Management, page 16, available at <http://www.dem.ri.gov/programs/benviron/water/quality/rest/pdfs/woofinal.pdf>.

⁴ See "About the Watershed," Woonasquatucket River Watershed Council, available at <http://wrwc.org/overview.php>.

⁵ See "2014 Waterbody Report for Mountindale Reservoir," U.S. Environmental Protection Agency, available at https://ofmpub.epa.gov/waters10/attains_waterbody.control?p_auid=RI0002007L-10&p_cycle=2014&p_state=RI&p_report_type=.

⁶ *Id.*, page 9

⁷ *Id.*

⁸ See 40 C.F.R. § 122.26(b)(13).

⁹ See 40 C.F.R. § 122.26(b)(14).

¹⁰ See 58 Fed. Reg. 61,146, 61,154 (November 19, 1993).

¹¹ See MSGP I(C).

Greenville has failed to obtain RIPDES permit coverage under the MSGP or any other valid authorization, at any time. Therefore, Greenville is operating in violation of the Clean Water Act.

PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS

Greenville is the person, as defined by 33 U.S.C. § 1362(5), responsible for the violations alleged in this Notice. Greenville has operated the Facility since at least 1991, currently advertises as the operator of the Facility, and is registered with the Rhode Island Secretary of State Division of Business Services as the operator of the Facility.¹² Greenville and its agents and directors, including but not limited to Ronald T. Gendron, president, have operational control over the day-to-day industrial activities at this Facility. Therefore, they are responsible for managing stormwater at the Facility in compliance with the CWA.

LOCATION OF THE ALLEGED VIOLATION

The violations alleged in this Notice have occurred and continue to occur at the construction sand and gravel and concrete facility (SIC 1442 and SIC 3271-3275) located at 79 Cedar Swamp Road, Smithfield, RI 02917.

ACTIVITIES ALLEGED TO BE VIOLATIONS

Greenville has engaged and continues to engage in “industrial activities,” and its operations fall under SIC 1442 (sand and gravel) and SIC 3271-3275 (concrete, gypsum, and plaster products), within the meaning of 40 C.F.R. § 122.26(b)(14)(vi).¹³ Because the Facility has primary SIC Codes of 1442 and 3271-3275 and discharges stormwater associated with industrial activity, Greenville is required to apply for and obtain permit coverage, and to comply with the requirements of a discharge permit such as the MSGP.

Activities at the Facility include, but are not limited to: storing, moving, and processing sand, gravel and concrete, and other materials outside or otherwise exposing them to the elements; operating and storing heavy machinery and equipment outdoors; and driving vehicles on and off the Facility thereby tracking pollutants off-site. All of these activities at the Facility have contaminated the site with industrial pollutants.

¹²See

http://ucc.state.ri.us/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=000064823&SEARCH_TYPE=1.

¹³ See MSGP, Appendix B: Facilities and Activities Covered, Table B-1. Construction Sand and Gravel (SIC 1442) and Concrete facilities are subject to the requirements of the MSGP for stormwater discharges.

Sand, gravel, concrete, and other materials; machinery and equipment; and vehicles at the Facility are exposed to precipitation and snowmelt. Precipitation falls on and flows over the sand and gravel piles; machinery and equipment; and vehicles, picking up dust, total suspended solids (TSS), total dissolved solids (TDS), fines, diesel/gas fuel, oil, heavy metals, trash, and other pollutants associated with the Facility's operations. The polluted runoff is then conveyed off-site into waters of the United States.

In addition, to the extent that Greenville uses water in its industrial processes, including but not limited to washing gravel and crushed stone and spraying on rock crushing and sorting machinery, that water becomes "process wastewater" (also referred to as "process water") as defined in 40 C.F.R. § 122.2.¹⁴ Discharges of process wastewater are not covered under the Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity. Discharges of process wastewater must instead be covered under an individual RIPDES permit. CLF intends to pursue claims related to Greenville's unpermitted discharges of process water to waters of the United States.

STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED

The CWA prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid discharge permit.¹⁵ Greenville discharges stormwater associated with its industrial activity, as defined by 40 C.F.R. § 122.26(b)(14), from its facility into waters of the United States. Because Greenville has not obtained coverage for these stormwater discharges under the MSGP or an individual RIPDES permit, it is illegally discharging stormwater without a permit, in violation of 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).¹⁶ By failing to apply for permit coverage and comply with the specific requirements of the MSGP, Greenville is in violation of 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).

a. Greenville is discharging stormwater to waters of the United States without a permit.

Greenville is an industrial discharger with a primary SIC Codes of 1442 and 3271-3275, which means that pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p), Greenville is obligated to apply for coverage under the MSGP or obtain other legal authorization. Because Greenville has

¹⁴ Defining "Process wastewater" as "any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product."

¹⁵ 33 U.S.C. § 1311(a).

¹⁶ See 33 U.S.C. § 1362(12); 40 C.F.R. § 122.2; MSGP, Appendix A: Definitions, Abbreviations, and Acronyms (defining the term "discharge of a pollutant" as "any addition of any 'pollutant' to 'waters of the State' from any 'point source'").

operated and continues to operate without a permit under Section 402(p), Greenville is in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

In addition, during storm events Greenville's industrial activities at its Facility have resulted in a "discharge of pollutants" within the meaning of 33 U.S.C. § 1362(12) and "stormwater discharge associated with industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14), from its Facility on each and every day that there has been a measurable precipitation event of above 0.1 inches. There have been many such storm events since 2012. The Facility is generating and conveying pollutants from at least the following "point sources": vehicles and equipment left outdoors; vehicles driving on and off the Facility; and channels, ditches, discrete fissures, containers, and other conveyances to waters of the United States.¹⁷ Mountindale Reservoir, Stillwater Reservoir, and the Woonasquatucket River are considered "waters of the United States" as defined in 40 C.F.R. § 122.2, and therefore are "navigable waters" as defined in 33 U.S.C. § 1362(7). The Facility is discharging this industrial stormwater without the permit required under Section 402 of the Act, 33 U.S.C. § 1342.

b. Greenville is violating the Clean Water Act by failing to obtain coverage and failing to comply with the requirements of the MSGP.

Greenville is violating 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1), by failing to apply for and obtain permit coverage, and to comply with the requirements of the MSGP.¹⁸ The Facility has a primary SIC Codes of 1442 and 3271-3275 and must obtain coverage under the MSGP for its stormwater discharges and for stormwater discharges from any co-located industrial activities.¹⁹ Greenville's failure to obtain coverage and comply with the permit conditions is in violation of the MSGP and 33 U.S.C. § 1342(p) of the Clean Water Act.²⁰

¹⁷ These discharges constitute "point sources" as defined by 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2. Under 40 C.F.R. § 122.2 and MSGP Appendix A, "discharge of a pollutant" includes "surface runoff which is collected or channeled by man."

¹⁸ MSGP parts I and X.

¹⁹ See MSGP parts VIII (E) and (J).

²⁰ A thorough search of EPA's facility databases shows no records and therefore no Clean Water Act permit coverage for Greenville. See EPA Enforcement and Compliance History Online (ECHO), <http://echo.epa.gov/facilities/facility-search>; EPA Permit Compliance System (PCS) and Integrated Compliance Information System (ICIS), <http://www.epa.gov/enviro/facts/pcs-icis/search.html>. By contrast, searches of these databases for several other sand and gravel and concrete facilities throughout Rhode Island show permit coverage.

1) Greenville Must Develop and Implement a Storm Water Management Plan (SWMP).

As a prerequisite to obtaining coverage under the MSGP, Greenville must prepare a Storm Water Management Plan ("SWMP").²¹ The SWMP must include, but is not limited to, the following: information related to a company stormwater pollution prevention team, a site description and general location map, a summary of pollutant sources, a description of control measures, and schedules and procedures pertaining to control measures and monitoring.²² Greenville has failed to develop a SWMP in accordance with the MSGP's requirements in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

2) Greenville Must Submit to the Rhode Island Department of Environmental Management a Complete Notice of Intent to be Covered under the MSGP.

To be eligible to discharge under the MSGP, Greenville must submit a complete Notice of Intent ("NOI") to the Director of the Rhode Island Department of Environmental Management (RIDEM).²³ Greenville has failed to prepare and file an NOI meeting all applicable requirements in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

3) Greenville Must Take Control Measures and Meet Water-Quality Effluent Limitations.

To be eligible to discharge under the MSGP, Greenville must select, design, install, and implement control measures (including best management practices) to prevent polluted stormwater discharges from reaching nearby waterbodies.²⁴ Greenville must address the selection and design considerations set forth in the MSGP, meet the non-numeric effluent limitations established by the MSGP, and meet limits contained in applicable permit effluent limitations guidelines.²⁵ These control measures must be in accordance with good engineering practices and manufacturer's specifications.²⁶ If the control measures are not achieving their intended effect of minimizing pollutant discharges, the permittee must modify these control measures as expeditiously as practicable.²⁷ Greenville has failed to cover the materials and operations that may result in polluted stormwater runoff. Greenville has not implemented required control measures in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

²¹ See MSGP part V.

²² See MSGP part V(F).

²³ See MSGP part I(C)(1)(a).

²⁴ See MSGP part II(A).

²⁵ *Id.*

²⁶ *Id.*

²⁷ See MSGP part III.

4) Greenville Must Conduct Routine Facility Inspections.

To be eligible to discharge under the MSGP, Greenville must conduct routine inspections by qualified personnel, with at least one member of the Facility's stormwater pollution prevention team participating, of all areas of the Facility where industrial materials or activities are exposed to stormwater.²⁸ Routine inspections must be conducted at least quarterly but in many instances monthly inspections are most appropriate.²⁹ These inspections must occur when the Facility is in operation.³⁰ The schedule of these inspections must be included in the Facility's SWMP.³¹ Greenville has failed to conduct the required routine inspections in accordance with the MSGP's requirements in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

5) Greenville Must Comply with the Required Monitoring and Sampling Procedures.

To be eligible to discharge under the MSGP, Greenville must collect and analyze stormwater samples and document monitoring activities consistent with the procedures in the MSGP.³² The MSGP requires different types of analytical monitoring (one or more of which may apply) including semiannual benchmark monitoring, annual effluent limitations guidelines monitoring, and other monitoring as required by the Director.³³ An operator must monitor outfalls including each outfall identified in the SWMP covered by a numeric effluent limit.³⁴ Required monitoring must be performed after stormwater events that result in an actual discharge on a required schedule.³⁵ All monitoring data collected under the Permit must be reported to RIDEM no later than 31 days after the last day of the monitoring period for all monitored outfalls for the reporting period.³⁶ Greenville has failed to conduct the required monitoring under the MSGP and has failed to submit the required monitoring reports to RIDEM in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

²⁸ See MSGP part IV(A).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² See MSGP part VI.

³³ See MSGP part VI(B).

³⁴ See MSGP part VI(A)(1).

³⁵ See MSGP part VI(A)(3).

³⁶ See MSGP part VII(A).

6) Greenville Must Carry out Required Reporting and Recordkeeping.

Greenville must maintain and submit any and all required monitoring data.³⁷ Such monitoring data includes the following: an annual report to RIDEM which includes the Facility's findings from the annual comprehensive site inspection and any documentation of correction actions;³⁸ an Exceedance Report to the Department no later than 30 days after receipt of the lab results if any of the follow-up monitoring shows any exceedances of a numeric effluent limit;³⁹ and any other required reports under the MSGP.⁴⁰ Greenville has failed to maintain the required records and failed to submit all required monitoring data under the MSGP in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

7) Greenville Must Comply with the Requirements of MSGP Subpart J.

Greenville must also comply with the sector-specific requirements contained in Subpart J of the MSGP.⁴¹ Subpart J requires construction sand and gravel facilities to implement additional technology-based effluent limits,⁴² meet additional SWMP and inspection requirements,⁴³ and monitor stormwater discharges for compliance with the benchmark limitations applicable specifically to construction sand and gravel facilities.⁴⁴ Greenville has failed to comply with the additional requirements of Subpart J of the MSGP in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

8) Greenville Must Comply with the Requirements of MSGP Subpart E

Greenville must also comply with the sector-specific requirements contained in Subpart E of the MSGP.⁴⁵ Subpart E requires concrete products facilities to implement additional technology-based effluent limits,⁴⁶ meet additional SWMP requirements,⁴⁷ and monitor stormwater discharges for compliance with the benchmark limitations applicable specifically to concrete products facilities.⁴⁸ Greenville has failed to comply with the requirements of Subpart E of the

³⁷ See MSGP part VII(A).

³⁸ See MSGP part VII(B).

³⁹ See MSGP part VII(C).

⁴⁰ See MSGP part VII(D).

⁴¹ See MSGP, Appendix B, Table B-1, Sector J; MSGP part VIII(J).

⁴² See MSGP part VIII(J)(4) & (5).

⁴³ See MSGP part VIII(J)(6) & (7).

⁴⁴ See MSGP part VIII(J)(8).

⁴⁵ See MSGP, Appendix D, Table D-1, Part 8.E.

⁴⁶ See MSGP Part VIII(E)(2).

⁴⁷ See MSGP Part VIII(E)(3).

⁴⁸ See MSGP Part VIII(E)(4).

MSGP, in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

DATES OF VIOLATION

Each day on which Greenville operates its Facility without permit coverage or discharges stormwater from the Facility without a permit is a separate and distinct violation of Section 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

Each day on which Greenville operates its Facility without individual permit coverage or discharges process water from the Facility without a permit is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a).

Greenville has discharged stormwater without a permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), on every day, since at least December 19, 2012 on which there has been a measurable precipitation event.

Every day, since at least December 19, 2012 on which Greenville has failed and continues to fail to apply for, obtain coverage, and comply with the requirements of the MSGP is a violation of Section 402(p)(3)(A) and (p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A).

Every day, since at least December 19, 2012 on which Greenville has failed and continues to fail to apply for, obtain coverage, and comply with the requirements of an individual RIPDES permit is a violation of Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a).

These violations are ongoing and continuous, and barring a change in the stormwater management controls and process water controls at the Facility and full compliance with the permitting requirements of the Clean Water Act, these violations will continue indefinitely.

RELIEF REQUESTED

Greenville is liable for the above-described violations occurring prior to the date of this letter, and for every day that these violations continue. Each separate violation of the Act subjects Greenville to a penalty of up to \$37,500 per day per day per violation for all Clean Water Act violations occurring between January 12, 2009 and November 2, 2015; up to \$51,570 per day per violation for all CWA violations occurring after November 2, 2015 and assessed on or after August 1, 2016 but before January 15, 2017; and up to \$52,414 per day per violation for all Clean Water Act violations occurring after November 2, 2015 and assessed on or after January 15, 2017, pursuant to § 309(d) of the CWA, 33 U.S.C. § 1319(d), and the regulations governing the Adjustment of

Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.2, 19.4..⁴⁹ CLF will seek assessment of the full penalties allowed by law.

In addition to civil penalties, CLF will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. CLF will seek an order from the Court requiring Greenville to correct all identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Lastly, pursuant to Section 505(d) of the Act, 33 U.S.C. § 1365(d), CLF will seek recovery of costs and fees associated with matter.

CONCLUSION

During the 60-day notice period, CLF is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of further litigation. If you wish to pursue such discussions, please have your attorney contact Max Greene within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing at the conclusion of the 60 days.

Sincerely,



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⁴⁹ 40 C.F.R. § 19.2.



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